

foot around the area. Later he argued that "'good condition' means the windshield should not have any cracks in it whatsoever; otherwise . . . you could purchase and install cracked windshields in any vehicle." In his post-hearing brief, counsel argues that "Visibility should not be considered relevant in establishing a violation." Needless to say, this extreme contention was contradicted by the testimony of both inspectors as well as the operator's witnesses.

Since I cannot agree that the standard "good," a comparative term, can properly be interpreted as "perfect" or that a de minimis likelihood of injury mandates the compulsory replacement of windshields with insignificant cracks I must once again reject the solicitor's interpretation and find the violation charged did not, in fact, occur.

Citation Nos. 2521413 and 2521414

On September 4, 1985, two inspectors returned to the operator's plant to check on the abatement of the windshield violations and to continue the regular inspection begun in July. At that time Inspector Manis wrote two 104(a) citations, the first being non-S&S and the second S&S.

The citations charged a violation of the guarding standard, 30 CFR 56.12-23. More specifically, they charged that at the No. 2 and 3 pumps there were four unguarded openings that exposed uninsulated inter electrical parts carrying 220 volts to possible contact. (Exhibits 1A, B, C, and D; 3A, B, C, and D; PX-6 and 8). It was further alleged that these openings were not guarded by location and that at the No. 2 pump the area was wet and an operator was in the area. These charges collapsed when the operator produced a video tape, witnesses and expert testimony which showed that there was no electrical voltage in the connections cited within six to eight seconds after the motors were started. (Tr. 112-113, 167).

Since there was no recognizable electrical shock hazard, I found the violations did not, in fact, occur. In his post-hearing brief, counsel appears to concede this but claims the issue now to be decided is "whether the openings were protected by location." Since I find there was no hazard to be guarded against, I also find the question of whether the openings were guarded by location is moot.

Citation No. 2521467

During the inspection of September 4, 1985, Inspector Grabner observed that a grounding wire for the control panel for the pole mounted 220 volt electrical disconnect switch for the shaker had been pulled loose from the earth grounding rod. In the absence of a ground, the condition created a